

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

H.J. MARTIN & SON, INC.

Plaintiff,

VS.

FERRELLGAS, INC.; S&S CONCRETE &

MASONRY, LLP, d/b/a NORTHLAND
CONCRETE & MASONRY, LLP,

Defendants,

No.: 1:20-cv-00054-DMT-CRH

MOTION FOR LEAVE OF COURT TO INTERVENE

COMES NOW, ACE American Insurance Corporation (“ACE American”), through its undersigned counsel, and moves this Court for leave to intervine in the above captioned lawsuit. In support of its *Motion*, ACE American states as follows:

Plaintiff H.J. Martin & Son, Inc. (“Martin”) filed this lawsuit against Defendants Ferrellgas, Inc. (“Ferrellgas”) and S&S Concrete & Masonry, LLP (“S&S”) alleging damages arising from the March 22, 2019 explosion and fire at the Trinity Health Replacement Facility construction project (“the Project”) located at 2305 37th Avenue SW in Minot, North Dakota. Intervening Plaintiff ACE American provided builders risk insurance for the Project. As a result of the explosion and fire at the Project, Trinity Health submitted a claim for benefits under the ACE American builder’s risk policy. Consistent with its obligations under the insurance contract, ACE American has made payments to or on behalf of Trinity Health for damages caused by the March 22, 2019 explosion and fire.

Intervening Plaintiff ACE American seeks to recover its interests by participating in the lawsuit previously filed by Martin against Defendant Ferrellgas. Plaintiff has a *Complaint in Intervention* ready to file immediately upon receiving leave from the Court to intervene. Like Martin, Intervening Plaintiff asserts that Defendant Ferrellgas' negligence caused the explosion and fire at the Project. Unlike the Martin *Complaint*, Ferrellgas is the only Defendant named in ACE American's *Complaint in Intervention*. However, all of the claims brought by Martin and by ACE American against Ferrellgas arise from the same activities undertaken by Ferrellgas at the Project.

FRCP 24(b)(1)(B) allows for permissive intervention when the intervening Plaintiff's claim and the original action have a question of law or fact in common. Intervening Plaintiff ACE American's claims arise from the same contract between Ferrellgas and S&S, the same activities undertaken by Ferrellgas at the Project, and the same resulting explosion and fire. ACE American's *Complaint in Intervention* includes causes of action similar to those stated in the Martin *Complaint*. Similar questions of law and fact involving the same witnesses are thus present in both the Martin and ACE American allegations.

Intervening Plaintiff's *Motion* should be granted because the rules governing intervention should be liberally construed so that all related controversies may be prosecuted and resolved in one action. Granting the *Motion to Intervene* will not unduly delay or prejudice the adjudication of Plaintiff Martin's rights. The original lawsuit is still in its early stages, the Martin *Complaint* having only been filed on April 9, 2020. Intervening Plaintiff has reviewed the Court's July 7, 2020 Order adopting the parties' scheduling and discovery plan and is prepared to comply with the dates and deadlines stated in that Order. This *Motion* is filed before the October 2, 2020 deadline for joining additional parties. No party will be prejudiced by ACE American's involvement as an additional Plaintiff in the lawsuit. Indeed, granting Intervening Plaintiff's

Motion will lead to a more efficient resolution of claims arising from the March 22, 2019 explosion and fire at the Project. Counsel for each of the current parties have indicated that they do not oppose ACE American's *Motion to Intervene* in the pending lawsuit.

Intervening Plaintiff seeks permission to file a *Complaint in Intervention* and requests that, upon granting of its *Motion* and filing the *Complaint in Intervention*, the caption of the original lawsuit be amended to reflect ACE American's participation as a Plaintiff in the litigation.

Dated this 1st day of October 2020.

Respectfully submitted,

COZEN O'CONNOR

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2020, I filed the foregoing Plaintiff ACE American Insurance Company's MOTION FOR LEAVE OF COURT TO INTERVENE, via the Court's Electronic Filing System, effecting service on the following parties of record:

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